

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

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MAR 23 2010

DIVISION PRO TEM B

HON. WARREN R. DARROW

CASE NUMBER: V1300CR201080049

JEANNE HICKS, Clerk
BY Rita Storms

By: Diane Troxell, Judicial Assistant

Date: March 23, 2010

TITLE:

STATE OF ARIZONA

(Plaintiff)

vs.

JAMES ARTHUR RAY

(Defendant)

COUNSEL:

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(For Plaintiff)

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(For Defendant)

**RULING RE: STATE'S REQUEST FOR COURT DETERMINATION RE: PUBLIC RECORDS
REQUEST FOR INMATE TELEPHONE CALLS AND VISITOR LOGS**

The Court has reviewed the State's Request for Court Determination Re: Public Records Request for Inmate Telephone Calls and Visitor Logs. The Court concludes that, due to procedural considerations, it cannot make the requested determination.

Attached to the State's request are copies of the written requests for the records in question. Thus, it appears that the State's request is designed to seek declaratory relief concerning any legal duty to comply with those specific requests. It also appears that the State's request is not being made on behalf of the State or the Yavapai County Attorney's Office as the agency responsible for prosecuting this cause; rather, the request is apparently being made on behalf of the Sheriff's Office or County Attorney's Office as an "officer" or "public body" that is in control of materials that may be deemed to be public records under A.R.S. § 39-121 et seq.

Declaratory judgment actions have been employed as a means of addressing disputes or potential disputes involving requests for public records. See *Arpaio v. Citizen Publishing Co.*, 221 Ariz. 130, 132 FN2, 211 P.3d 8, 10 FN2 (App.2008). Such actions are governed, however, by Rule 57 and the other Arizona Rules of Civil Procedure and by A.R.S. § 12-1831 et seq. and allow for participation by all interested parties.

AFTER 12:00PM

MAR 23 2010

The Court acknowledges that the procedure suggested by the State is similar to the procedure apparently approved by the Arizona Court of Appeals in *Schoeneweis v. Hamner*, 223 Ariz. 169, 221 P.3d 48 (App.2009). In *Schoeneweis* the Court of Appeals held that "because significant privacy concerns may preclude release of many medical examiners' records and related documents, a court must conduct an *in camera* review before permitting the release of such records pursuant to the Arizona Public Records Law." *Id.*, 221 P.3d at 50. In the *Schoeneweis* opinion, however, there is no mention of specific requestors actually seeking to obtain the materials that the petitioner in that special action sought to have sealed. In fact, the Court of Appeals noted that the briefing schedule "allowed time for any requestor who sought the records at issue from the real-parties-in-interest to seek leave to intervene. No requestor sought to participate in these proceedings." *Id.*, 223 Ariz. 169, FN1, 221 P.3d 48, 50 FN1. In the matter under consideration, named persons have requested access to specified records or other materials and may not have received notice of State's request for determination.

This Court concludes that a determination of the issues presented to the Court by the State, whether such determination is made before or after an *in camera* review of the materials in question, can be made in the context of a declaratory judgment action or an action brought pursuant to A.R.S. § 39-121.02. In any event, persons requesting documents or other materials should be provided notice of relevant proceedings and an opportunity to seek leave to intervene should they choose to do so.

For the reasons set forth above,

IT IS ORDERED **denying, without prejudice**, the State's Request for Court Determination Re: Public Records Request for Inmate Telephone Calls and Visitor Logs.

DATED this 23rd day of March, 2010.


Warren R. Darrow
Superior Court Judge

cc: Victim Services Division